IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 18704 OF 2007

Dated : September 11, 2007

Between:

A.V.S.Karunakara Rao

Petitioner

AND

The Government of Andhra Pradesh,
Rep. By its Secretary,
Irrigation & Command Area Development Department,
Secretariat, Hyderabad and another.

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 18704 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records relating to the order dated 06.08.2007 passed in O.A. No. 450 of 2007 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, confirming the provisional seniority list of the Assistant Executive Engineers in Zone IV vide Memo No. RC/ENC/D1/24018/89 dated 24.1.2007 to the extent of petitioner and to quash the same by declaring it arbitrary and contrary to the provisions of A.P. State & Subordinate Service Rules, 1996, the petitioner filed this writ petition.

The petitioner herein filed the above O.A. before the Tribunal assailing Memo No. Memo No. RC/ENC/D1/24018/89 dated 24.1.2007, by which the petitioner is shown at Sl. No. 593 in the seniority list, as contrary to Rule 33 of A.P. State and Subordinate Service Rules, 1996 and also the Memo of the first respondent viz., 19478/Ser.11.2/02-5 dated 24.7.2003 as offending Article 14, 16 and 21 of the Constitution of India and consequently to direct the respondents to fix the seniority of the petitioner above his juniors.

The facts, in brief, are that the petitioner was appointed as Assistant Executive Engineers on being selected by the A.P. Public Service Commission in the year 1978. Subsequently, he passed Accounts Test on 7.12.1991 and promoted as Deputy Executive Engineer

on 9.3.1996. It is the case of the petitioner that since he was not considered for promotion as Executive Engineer, he made representation to the first respondent in the year 2003 and the first respondent, after examining the matter, issued order dated 24.7.2003 directing the second respondent to restore his seniority on par with the candidates selected by the A.P. Public Service Commission by direct recruitment.

After long lapse of time, the 2nd respondent issued provisional seniority list of the Assistant Executive Engineer from 1978 General Recruitment Batch to 2001 Limited Recruitment Batch of Zone IV in Circular Memo No. RC/ENC/D1/24018/89 dated 24.1.2007, wherein the petitioner was shown at Sl. No. 593 instead of Sl. No. 56 and in the proposed inter se Zonal Seniority List of the Assistant Executive Engineer, his name was shown at Sl. No. 3000 instead of 200, after having put in 23 years of service. It is further stated that the first respondent issued Orders dated 24.7.2003 directing the second respondent to restore his seniority. The petitioner further submits that Rule 33 read with Rule 36 of the A.P. State and Subordinate Service Rules speak that the seniority of the persons in the service shall be determined in respect of the candidates selected by A.P. Public Service Commission or other selecting authority by direct recruitment, shall be with reference to the ranking

assigned irrespective of the date of commencement of probation in that category.

It is further submitted that though the petitioner was appointed and his seniority was fixed with effect from 1978 as per the ranking assigned by the A.P. Public Service Commission, his name was shown below 1984 recruitment batch and, therefore, the provisional seniority list dated 24.1.2007 is contrary to law and, therefore, the extension of probation for the first time in respect of 210 Assistant Executive Engineer in terms of Rule 16(h) of the A.P. State and Subordinate Service Rules, 1996 is also bad.

Assailing the same, the petitioner filed the above O.A. and the Tribunal, clubbing this O.A. with other Batch of O.As., dismissed the applications holding that the issues raised before the Tribunal can, as well, be raised before the Authorities submitting their objections to the provisions Seniority List and unless a final seniority list is not prepared, the petitioner and others cannot have cause of action and ultimately dismissed all the O.As. Hence, this writ petition, by the petitioner.

It is contended on behalf of the petitioners that Rule 16(h) is applicable only when the period of probation is extended by the Government, in relaxation to the Rules, and it is not applicable to the petitioners' cadre and,

therefore, the impugned Memo issued by the Government is illegal. It is also contended on behalf of the petitioners that the Tribunal without deciding the said issue, dismissed the O.A. clubbing the same with batch of other O.As. involving the issue of provisional seniority list and dismissed the O.A. on erroneous grounds without going into merits of the case.

As can be seen from the impugned order, the Tribunal did not advert to the contentions of the petitioner that though he was appointed and his seniority was fixed with effect from 1978 as per the ranking assigned by the A.P. Public Service Commission, yet his name was shown below 1984 recruitment batch and therefore, the provisional seniority list issued by the 2nd respondent dated 24.1.2007 is contrary to law. The Tribunal has dealt with this matter clubbing the same into a batch, which was filed questioning the extension of probation.

Therefore, without adverting to the merits or otherwise of the contentious issues raised in this writ petition, we feel it appropriate to set aside the order dated 06.08.2007 passed in O.A. No. 450 of 2007 by the Andhra Pradesh Administrative Tribunal, Hyderabad, to the extent of petitioner.

Consequently, the Writ Petition is allowed and matter is remanded to the Tribunal for consideration afresh with a

direction to dispose of the same within a period of three months from the date of receipt of a copy of this order, in the light of the above observations. No order as to costs.

The interim order of status quo granted by the Tribunal in O.A. No. 450 of 2007 is restored and shall continue till disposal of the O.A.

_____

T.MEENA KUMARI, J.

_____

D.APPA RAO, J.

September 11, 2007
MAS